MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Eastern District of North Carolina
Name (under which you were convicted): James Scott Robinson	Docket or Case No.: 5:02-cr-80-H-1
Place of Confinement: USP McCreary, Pine Knot, KY	Prisoner No.: 23086-156
UNITED STATES OF AMERICA v.	Movant (include name under which you were convicted) James Scott Robinson

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

   United States District Court
   Eastern District of North Carolina
   Greenville, NC

   (b) Criminal docket or case number (if you know): 5:02-cr-80-H-1

2. (a) Date of the judgment of conviction (if you know): 12/5/2005

   (b) Date of sentencing: 12/5/2005

3. Length of sentence: 193 years, 3 months

4. Nature of crime (all counts):

   Conspiracy (3); armed bank robbery (3); brandishing firearm during crime of violence (6); interference with commerce by robbery (5); attempted bacnk robbery (1); discharging a firearm during a crime of violence (2); aiding and abetting

5. (a) What was your plea? (Check one)

   (1) Not guilty ☑ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☑ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☑

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Fourth Circuit

(b) Docket or case number (if you know): 04-4388

(c) Result: Reversed; affirmed

(d) Date of result (if you know): 4/18/2005

(e) Citation to the case (if you know): 404 F.3d 850

(f) Grounds raised:

Competency to stand trial; transfer to adult jurisdiction; inadmissible confession; improper sentence. Note: There was a second appeal after resentencing. It was Fourth Circuit case number 05-5252. The decision was not published. It is reported at 204 Fed. Appx. 161 (4th Cir. 2006). This appeal challenged the imposition of a sentence of 193 years on proportionality grounds under the Eighth Amendment. In that appeal, defendant specifically challenged his sentence of more than193 years as violating Eighth Amendment, but the argument was rejected because "proportionality review is not available for any sentence less than life imprisonment." United States v. Robinson, 204 Fed.Appx. 161 *1 n.2 (4th Cir. 2006). There was no petition for a writ of certiorari.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☑ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 05-5772

(2) Result:

Certiorari denied

(3) Date of result (if you know): 10/3/2005

(4) Citation to the case (if you know): Robinson v. United States, 546 U.S. 916 (2005)

(5) Grounds raised:

Various, including improper sentence.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☑

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ❑ No ❑

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ❑ No ❑

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ❑ No ❑

(2) Second petition: Yes ❑ No ❑

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

James Scott Robinson was only 13 years old when he committed the crimes for which he was convicted and sentenced to 193 years and 3 months. This Court had initially sentenced him to only 384 months based on his motion for a downward departure given his diminished mental capacity. This sentence was reversed on appeal because the district court did not have the authority to depart below a statutory minimum sentence absent a government motion based on substantial assistance. United States v. Robinson, 404 F.3d 850, 862 (4th Cir.), cert. denied, 126 S. Ct. 288 (2005).

Intervening cases from the Suprme Court, including Graham v. Florida, 130 S. Ct. 2011 (2010), and, more importantly, Miller v. Alabama, 132 S. Ct. 2455 (2012), now show that proportinality review is now available for a juvenile in a case that dows not involve life without parole. Based on Mr. Robinson's age at the time of the crimes (13 or 14 years old), along with his limited mental capacity, the sentence imposed on him, which is effectively life without parole, is unconstitutional.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

The precise issue was not reaied because there has been an intervening change in the law. Mr. Robinson did challenge his eventual sentence of 193 years and 3 months in his appeal

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The Eighth Amendment claim relying on Graham v. Florida and Miller v. Alabama was not presented based precisely on those two cases because they were not decided until several years after Mr. Robinson's appeals were decided. However, he raised the excessiveness of his 193 year and 3 month sentence in his second appeal. But the Fourth Circuit ruled there was no proportinality review available for this type of sentence.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

James M. Ayers II, Post Office Box 1544, New Bern, NC 28563

(d) At sentencing:

James M. Ayers II, Post Office Box 1544, New Bern, NC 28563

(e) On appeal:

James M. Ayers II, Post Office Box 1544, New Bern, NC 28563

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☑ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

28 U.S.C. 2255(f)(3) provides that the motion to vacate must be filed within one year of "ithe date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review . . . ." Miller v. Alabama, and its companion case Jackson v. Hobbs, were decided on 25 June 2012. These cases announced a new rule that a mandatory life sentence without parole on a person under the age of 18 at the time of his crime was cruel and unusual under the Eighth Amendment. Miller, 132 S. Ct. at 2460. The Supreme Court itself gave the ruling retroactive effect by applying it to Kuntrell Jackson, whose case came to the court on collateral review. Miller, 132 S. Ct. 2461. In other words, his case was final long before it reached the court. Yet he was afforded relief. This retroactive application of the rule in Miller cannot be limited to Jackson himself. It must apply to all others "similarly situated" to him. Teague v. Lane, 489 U.S. 288, 300 (1989) ("[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated."). This includes all individuals – such as Mr. Robinson – whose convictions were final when Miller was announced. Under the language of section 2255(f)(3) and the application of the Miller rule to Kuntrell Jackson, this motion is timely.

In additon, the United Sattes Court of Appeals has recently authorized successive motions to vacate in light of Miller and Graham. See In re Thomas, 113-252 (4th Cir. 19 June 2013); In re Landry, No. 13-247 (4th Cir. 30 May 2013); In re James, No. 12-187 (4th Cir. 10 May 2013). These orders highlight the importance of the substantive issue in this motion and the timeliness of this motion.

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

That his motion be granted and his sentence vacated, and that counsel be appointed to represent him before this Court on this motiion and any necessary further proceedings.

or any other relief to which movant may be entitled.

/s/ M. Gordon Widenhouse, Jr.*

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Executed (signed) on ______________________ (date).

____

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

*Mr. Widenhouse has prepared and filed this motion pro bono at the request of James Scott Robinson and the Federal Defender Service. A letter from Mr. Robinson making this request is attached. Mr. Robinson is without funds to retain counsel. Mr. Widenhouse is willing to accept appointment to this matter. A separate motion for appointment of counsel is being filed along with this motion. If Mr. Widenhouse is appointed, he requests an opportunity to file a memorandum supporting this motion to vacate.

CERTIFICATE OF SERVICE

I hereby certify that on 25 June, 2013, I electronically filed the foregoing Motion To Vacate Pursuant to 28 U.S.C. § 2255 with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

RUDOLF WIDENHOUSE & FIALKO

/s/ M. Gordon Widenhouse, Jr.
N.C. State Bar #10107
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: 919-967-4900
Telefax: 919-967-4953
Email: mgwidenhouse@rwf-law.com

I would Like You to work on my case. It would Be A Blessing from The Great Builder of All things. To Give me one more Go At Life Again. So Yes Do what You can for me. Please.

Robinson

I Don't know what else To say. But I Hope That Your for real. Becouse There's SomeThings That Happen to me That Shouldn't have. And

Thank You.

Bless It Be To You

I Hope That You find Them. And Let Truth Shine Bright

P.S. I have know money To Give. So I Hope Thats not needed from me.

Robinson.

Thank You.

FILED: June 19, 2013

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-252
(1:97-cr-00355-WMN-3)

In re: HILTON THOMAS, a/k/a Dinkles,

Movant.

O R D E R

Movant has filed a motion under 28 U.S.C. § 2244 (2006) for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C.A. § 2255 (West Supp. 2013). The court grants authorization for the movant to file a second or successive § 2255 motion, thus permitting consideration of the motion by the district court in the first instance. This court also grants Thomas' motion to seal the exhibits attached to his § 2244 motion and grants his pending motion for appointment of counsel on appeal.

Entered at the direction of the panel: Judge Motz, Judge Duncan, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: May 30, 2013

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-247

In re: HOLLY LANDRY,

Movant.

O R D E R

Movant has filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2254. The court grants authorization for the movant to file a second or successive habeas petition, thus permitting consideration of the petition by the district court in the first instance.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: May 10, 2013

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 12-287

In re: TERRANCE LAMOUNT JAMES, a/k/a T. L. James-Bey, a/k/a Terrance L. James-Bey, Sovereign

Movant

O R D E R

Movant has filed a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2254.

Counsel was appointed counsel for formal briefing and argument of the motion, and the case was scheduled for argument on May 14, 2013. The case is now removed from the argument calendar for submission on the briefs.

The court grants authorization for the movant to file a second or successive habeas petition, thus permitting consideration of the petition by the district court in the first instance.

Entered at the direction of Judge King with the concurrence of Judge Shedd and Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk